MOTION FILED
JUN 25 1981

80-2152

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF MISSOURI, *et al.*,
Petitioners,

vs.

CRATON LIDDELL, *et al.*,

and

EARLINE CALDWELL, *et al.*,

and

JANIS ADAMS, *et al.*,

and

BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, *et al.*,

and

THE CITY OF ST. LOUIS, MISSOURI, and the UNITED STATES OF AMERICA,
Respondents.

On Application For a Writ of Certiorari to the Eighth Circuit Court of Appeals

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE WITH BRIEF ATTACHED

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TABLE OF CONTENTS

	Page
Motion For Leave To File Brief of Amici Curiae	1
Interest Of The Movants	1
Compliance With Rule 42	5
Brief Of Amici Curiae	7
A. Interest of Amici	7
B. Argument	8
Conclusion	16
Appendix:	
A - Paragraph 12 of Order of May 21, 1980	A-1
B - Section 161.092, Revised Statutes of Missouri	A-4
C - Opinion of U.S. District Court	A-6

TABLE OF AUTHORITIES

Cases:

Adams v. U.S., 620 F2d 1277 (8th Cir. 1980)	2
Dayton Board of Education v. Brinkman, 433 U.S. 406 (1977)	15
Liddell v. Board of Education, Nos. 80-1458, 80-1494, 80-1531, 80-1599 and 80-1735 (8th Cir. Feb. 13, 1981)	4,10
Milliken v. Bradley, 418 U.S. 717 (1974)	8
Swann v. Charlotte Mecklenberg Board of Education, 402 U.S. 1, 16 (1971)	8

Statutes:

Section 171.011 RSMo. 10,11

Section 167.151 RSMo. 11

Section 161.092 RSMo. 11

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INTEREST OF THE MOVANTS

The Bayless School District, Brentwood School District, Clayton School District, Hancock Place School District and Jennings School District are all located within St. Louis County, Missouri; the Consolidated School District No. 6, Crystal City

School District No. 47, DeSoto School District No. 73, Dunklin School District R-5, Hillsboro School District R-III, Reorganized School District R-VI, Reorganized School District R-VII, Northwest Reorganized School District No. I, Sunrise School District R-IX and Windsor Consolidated School District No. I are all located in Jefferson County, Missouri; Orchard Farm School District is located in St. Charles County, Missouri.

1. In 1972, a group of black students residing within the City of St. Louis and their parents instituted this lawsuit in U.S. District Court for the Eastern District of Missouri, alleging that the public schools of the City of St. Louis, Missouri were racially segregated. The City of St. Louis is an independent political and geographical entity, with the Board of Education of the City of St. Louis having responsibility for the public schools located within the City. The boundaries of the St. Louis City School District are coterminous with the boundaries of the City itself.

2. On April 12, 1979, the Court concluded that the Board of Education of the City of St. Louis and the State of Missouri had committed no constitutional violations, had fulfilled their constitutional obligations to create a unitary school system, and that any subsequent resegregation of the City of St. Louis school system had resulted from demographic factors, not acts or omissions by the Board of Education or the State of Missouri.

3. That decision was reversed by the Eighth Circuit Court of Appeals and the case was remanded to the District Court solely for the purpose of devising and implementing a plan to alleviate segregation within the City of St. Louis school system. *Adams v. U.S.*, 620 F.2d 1277 (8th Cir. 1980).

4. Pursuant to that opinion, the District Court entered its order on May 21, 1980. Paragraph 12 of the Order provided, in pertinent part:

> 12. The State Defendants, the United States and the St. Louis Board of Education are ordered and directed as follows:

a. To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by July 1, 1980.

. . .

c. To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

5. The State of Missouri Defendants sought a stay of this Order in the District Court, Court of Appeals and from two Justices of this Court. Those applications were denied. On September 17, 1980 and December 19, 1980, the District Court entered further Orders, which expanded the scope of the relief ordered in Paragraphs 12 (a) and (c) of its Order of May 21, 1980, to include the Missouri counties of Jefferson and St. Charles. The expanded Order also required the State of Missouri to enumerate those districts within the three subject counties which were willing to participate in the plan, those not willing to participate in the plan, and the number of students that each district was willing to receive. Further, the participating school districts were to delineate "those that they desire to send outside of their district . . . including the race and grade of those students." (Appendix A). The amended Order further required the preparation of a "feasibility plan of inter-district school desegregation involving the St. Louis School District and such suburban school districts, that will provide

complete and lasting school desegregation." That plan "should specifically include pupil assignment and administrative reorganization provisions."

6. The State of Missouri Defendants sought a stay of the District Court's December 19th Order in the Eighth Circuit Court of Appeals, where the appeal of the District Court's Order of May 21, 1980, was still pending. The stay was denied by the Court of Appeals on February 13, 1981, at which time the Court of Appeals also filed its opinion in this matter, affirming the District Court. *Liddell* v. *Board of Education,* Nos. 80-1458, 80-1494, 80-1531, 80-1599 and 80-1735 (8th Cir. Feb. 13, 1981).

7. If the Order of the District Court of May 21, 1980, as modified by the Orders of September 17, 1980 and December 19, 1980, and affirmed by the Eighth Circuit Court of Appeals is allowed to stand, it will have a clear and significant impact upon these Movants. Enforcement of the Order would lead to the development and implementation of plans providing for the exchange of students not just between the City of St. Louis School District and the school districts located in St. Louis County, Jefferson County and St. Charles County, but also between the St. Louis County school districts themselves. Further, the Order requires that plans submitted specifically include pupil assignment and administrative reorganization provisions encompassing the school districts located within St. Louis County, as well as additional counties "limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances". Jefferson and St. Charles Counties are, after St. Louis County, the Missouri counties most proximate to the City of St. Louis.

COMPLIANCE WITH RULE 42

Counsel for all parties have been contacted by counsel for Movants, and have indicated they would consent to the grant of this Motion. Written consents will be filed with the Clerk as soon as possible.

WHEREFORE, Movants pray that leave be granted them to file the annexed brief as Amici Curiae.

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BRIEF OF AMICI CURIAE

A. INTEREST OF AMICI

The interests of the amici curiae in this case are as stated in the Motion for Leave to file this Brief, *supra*. If the Order of May 21, 1980, as modified by the Orders of September 17, 1980 and December 19, 1980, is allowed to stand, it will have a clear and significant impact upon every school district located within St. Louis County, Jefferson County and St. Charles County.

B. ARGUMENT

The decision of the Eighth Circuit Court of Appeals, affirming the Order of the District Court, is in error and should be reversed. The trial court exceeded its jurisdiction in ordering a "voluntary" plan, encompassing inter-district pupil transfers, to remedy intra-district school segregation. The issue of inter-district Constitutional violations was neither pleaded nor tried, and no finding of any liability has been entered regarding any St. Louis County, Jefferson County or St. Charles County School District. As such, the remedy ordered by the District Court, as affirmed by the Eighth Circuit Court of Appeals, exceeds the scope of the violations found, and thus the District Court had no jurisdiction to enter such an Order.

The Order of the District Court, as affirmed by the Court of Appeals, requires the State defendants, the United States, and the St. Louis Board of Education to submit to the Court a plan of inter-district school desegregation "necesary to eradicate remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County." The plan is to include not only St. Louis City and County, but is to be "limited only by consideration of feasibility and practicality, including reasonableness of transportation times and distances." Further, the plan should "specifically include pupil assignment and administrative reorganization provisions."

This Court, in *Swann* v. *Charlotte Mecklenberg Board of Education,* 402 U.S. 1, 16 (1971), addressed the question of remedies in school desegregation cases generally, and stated: "(as) with any equity case, the nature of the violation determines the scope of the remedy."

Milliken v. *Bradley,* 418 U.S. 717 (1974), established the standards by which any order requiring an inter-district remedy would be evaluated. The Court applied the principle articulated

in *Swann* v. *Charlotte Mecklenberg, supra,* stating that school desegregation remedies are designed "as all remedies are, to restore the victims of discriminatory conduct to the position they would have occupied in the absence of such conduct." 418 U.S. at 746. Elaborating upon the bases for imposing an inter-district remedy, the Court held:

> "Before the boundaries of separate and autonomous school dstricts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a Constitutional violation within one district that produces a significant segregative effect in another district. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of inter-district segregation. Thus, an inter-district remedy might be in order where the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an inter-district remedy would be appropriate to eliminate the inter-district segregation directly caused by the constitutional violation. Conversely, without an inter-district violation and inter-district effect, there is no constitutional wrong calling for an inter-district remedy." 418 U.S. at 744-45.

In the present case, as in the *Milliken* case, the only theory upon which the case was litigated was one related to intra-district segregated schools. The relief sought in the complaints extended only to the public school system within the City of St. Louis. No findings were entered that the State Defendant or any suburban school district had committed any constitutional violations which could have had an inter-district effect and justify an inter-district remedy. As such, the *Milliken* decision would prohibit any remedy being ordered which would extend beyond the boundaries of the St. Louis School District. The

Eighth Circuit Court of Appeals, in its decision of February 13th, upheld Section (a) of Paragraph 12 on the basis that "the voluntary exchanges contemplated by Section (a) must be viewed as a valid part of the attempt to fashion a workable remedy within the City." *Liddell* v. *Board of Education*, Nos. 80-1458, 80-1494, 80-1531, 80-1599 and 80-1735, slip. op. at 19 (8th Cir. Feb. 13, 1981).

However, Amici have found no case in which a Court has alleviated an intra-district violation with an inter-district remedy. The fact that the School District of the City of St. Louis is predominantly black does not justify ignoring the Court's holding in *Milliken* v. *Bradley* regarding inter-district remedies. This Court has previously stated that the United States Constitution does not require any particular balance between black and white students; in *Swann*, this Court held that the mere existence of a predominantly one-race school did not violate the Fourteenth Amendment. 402 U.S. at 24. *Milliken* made it clear that the mere existence of a one-race school district did not violate the U.S. Constitution. 418 U.S. at 740.

The Eighth Circuit is clearly in error in its affirmation of the District Court, for there has been no finding of vestiges of segregation in St. Louis County, and the violations found within the City of St. Louis cannot serve as a basis for an inter-district remedy. Furthermore, neither the State nor any other defendant has the power to impose an inter-district remedy which would encompass St. Louis County, Jefferson County or St. Charles County. The local school boards of the various school districts in the State of Missouri have complete control over the schools located within each district. The Statutes of the State of Missouri make it clear that the State is to exercise no control over local schools. Section 171.011 of the Revised Statutes of the State of Missouri provides in pertinent part:

> The School Board of each school district in the State may make all needful rules and regulations for the organization, grading and government in the school district. RSMo. 1978.

Further, Section 177.011 of those Statutes provides:

> The title of all school house sites and other school property is vested in the district in which the property is located. All property leased or rented for school purposes shall be wholly under the control of the School Board during such time. No Board shall lease or rent any building for school purposes while the district school house is unoccupied, and no school house or school site shall be abandoned or sold until another site and house are provided for the school district. RSMo. 1978.

Section 167.151 of the Missouri Statutes gives the school boards of the various districts complete discretion as to the admission of non-resident pupils. The only exceptions apply to students who have easier access to a school within another district, or who have no high school within their home district. The State of Missouri has no power to effect pupil assignments or administrative organization within the various school districts; the only powers the State Board of Education possesses are contained in Section 161.092 of the State Statutes. (Appendix B).

Perhaps most definitively, Section 40 of Article 3 of the Missouri Constitution states that the General Assembly shall not pass any local or specific law:

> 20) Creating new townships or changing the boundaries of townships or school districts.
>
> 21) Creating offices, prescribing the powers of officers in, or regulating the affairs of counties, cities, townships, election or school districts.
>
> 24) Regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes.

Local automony is an integral part of the public education system of the State of Missouri, and both the Constitution and Statutes reflect that fact.

The District Court's Order of December 19, 1980 (see attached Appendix A) required the State Defendants to assume that all St. Louis County school districts will participate in any voluntary plan and to provide specific data on the racial composition and space available in each district. The District Court also ordered the State to provide information regarding the location of new magnet schools within St. Louis County. Further, the State is ordered to report back to the District Court not only the school districts which have indicated their willingness to participate, but also as to those districts which have indicated they are not willing to participate in any "voluntary" plan.

An examination of the District Court's December 19, 1980 Order, and the memorandum accompanying it (Appendix C), reveals the true involuntariness of the proposals. The State Defendants are ordered to provide figures on *all* districts, regardless of whether those districts have agreed to participate in a plan. The only purpose which could possibly be served by this reporting requirement would be to coerce individual school districts into agreeing to participate in a court ordered plan. If space were available in a particular district, intense pressures could be brought against that district to participate in a plan, even though it is under no constitutional obligation to do so. Further, the Memorandum accompanying the Order requires that the State include in any plan submitted "a plan providing for the interchange of students *between the districts* of the county in order to achieve more integregation, and between the county and the city." The phrase "to achieve more integregation" can only apply to the various county school districts. At this point, the District Court has totally abandoned the pretext of attempting to develop a voluntary plan to alleviate segregation within the City of St. Louis. The District Court has now moved totally outside the bounds of its jurisdiction, and is attempting to "in-

tegrate" totally autonomous school districts, none of which have been alleged to operate anything less than a unitary plan, and none of which are before the Court. The principles of *Swann* v. *Charlotte Mecklenberg Board of Education, supra,* and Milliken v. Bradley, are now being totally disregarded by the District Court. As this Court stated in Milliken:

> "Where the schools of only one district have been affected, there is no constitutional power in the courts to decree relief balancing the racial composition of that district's schools with those of the surrounding districts." 418 U.S. at 749.

The District Court is not only trying to do exactly what this Court has held it has no jurisdiction to do, but is also actually trying to affect the racial composition of the surrounding districts themselves.

The Order of May 21, 1980, as modified, requires the State Defendants to prepare a "feasibility plan" to provide complete and lasting school desegregation between the City of St. Louis and the surrounding districts. That plan "should specifically include pupil assignment and administrative reorganization provisions." The Eighth Circuit Court of Appeals, in its opinion of February 13, 1981 upholding the District Court's Order of May 21, 1980, dispelled any doubts as to the exact nature of the plan contemplated. The Court of Appeals stated:

> "We take this opportunity to stress the legal obligation of the State of Missouri, the United States and the Board of Education to develop *and implement* the plans contemplated by Paragraph 12." Liddell v. Board of Education, *supra,* at p. 20

What had originally been characterized as a study of the "feasibility" of a voluntary plan to alleviate school segregation within the City of St. Louis is now clearly identified as an order of the Court to develop and implement a plan not just to

alieviate segregation within the City of St. Louis, but to develop a system of pupil and administrative rearrangement which would result in significant alteration of the current system of school administration within the City of St. Louis, St. Louis County, St. Charles County and Jefferson County. Specifically, the county school districts would be immediately impacted, inter alia, as follows: 1. The present staff would have to be increased in order to maintain current student-teacher ratios; 2. An extensive program of staff reorientation and retraining would be required in order to effectuate a smooth assimilation of the new students into the receiving districts' educational environment; 3. Additional equipment, including teaching aids, would have to be acquired in order to maintain educational standards for the increased number of students.

Contrary to the statement of the Court of Appeals, the State of Missouri is under no legal obligation to implement any plan contemplated by Paragraph 12. Not only is the State not legally obligated, it is without the power to implement such a plan.

These amici now find themselves in an untenable position. Paragraph 12(c) of the order of the District Court, as affirmed by the Court of Appeals, requires the State of Missouri to develop *and implement* a plan to "eliminate the vestiges of segregation" within St. Louis County, and to develop *and implement* a plan of pupil and administrative rearrangement for the school districts of St. Louis County, St. Charles County and Jefferson County. Such a plan could only be implemented through an extensive program of cross-district busing, coupled with extensive reassignments of local administrative personnel. This would require local school districts within the subject counties to surrender control of the education of any students residing within one school district who are bused to another district. Further, it would require transfers and reassignments of local administrative personnel, who had been hired and trained by the individual school districts and are familiar with the strengths and weaknesses, as well as the educational

philosophies, unique to each district. For the county school districts to participate in such a plan would be completely contrary to the principles ingrained in the public education system of this State, as clearly evidenced by the statutes cited above.

Further, a refusal to participate on the part of any amici would be condemned as an attempt to preserve the "vestiges of segregation within St. Louis County," as well as an attempt to block "complete and lasting school desegregation." We must reiterate that no court has entered a finding that any "vestiges of segregation" exist within St. Louis County. Further, no school district within St. Louis County, St. Charles County or Jefferson County has been alleged or shown to maintain anything less than a completely unitary system, and thus there has been no indication of a need for a plan of "complete and lasting school desegregation."

The District Court and the Eighth Circuit Court of Appeals have exceeded the bounds of their jurisdiction and are attempting to interject their judgment into the operations of State and local governmental entities. The concept of "complete and lasting school desegregation" is nothing more than a euphemism for a determination by the District Court and the Court of Appeals that some sort of racial balance should be achieved throughout the entire metropolitan area. As such, those Courts are in a position remarkably similar to the position of the lower courts in *Milliken,* where this Court found that the attempt to impose a metropolitan-wide remedy for the entire Detroit area was based upon the perception of the District Court and the Court of Appeals that "total desegregation of Detroit would not produce the racial balance which they (the courts) perceived as desirable." 418 U.S. at 740. At least in that case, the suburban school districts were parties to the litigation, if only for a short time.

In *Dayton Board of Education* v. *Brinkman,* 433 U.S. 406 (1977), this Court reiterated the burden which must be met before the Federal Courts will be allowed to transcend local control of public education:

> "The case for displacement of the local authorities by a Federal Court in a school desegregation case must be satisfactorily established by factual proof and justified by a reasoned statement of legal principles." 433 U.S. at 410.

No factual proof has been introduced in this case; no statements of legal principes have been proffered. The State of Missouri has been ordered to develop and implement a plan which would include pupil assignment and administrative reorganization in school districts in St. Louis County, Jefferson County and St. Charles County, none of which has been before the Court.

CONCLUSION

This Court has, in the cases of *Milliken* v. *Bradley, supra,* Swann v. Charlotte Mecklenberg, *supra,* and Dayton Board of Education v. Brinkman, *supra,* established strict standards which, if met, would justify the imposition of an inter-district remedy to alleviate school segregation, even if such a remedy would result in the displacement of local authorities who traditionally had control of the education of the students residing within their district. The District Court and the Eighth Circuit Court of Appeals have now seen fit to totally disregard those carefully drawn standards, and accordingly should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

This quotation of the text of Paragraph 12 of Order of May 21, 1980, includes the amendments to that paragraph made by the court on September 17, 1980, indicated in italics. It includes the amendments made by the court on December 19, 1980, underlined.

* * * * *

12. The State defendants, the United States, and the St. Louis Board of Education are ordered and directed as follows:

a) To make every feasible effort to work out with the appropriate school districts in the St. Louis County and develop, for 1980-81 implementation, a voluntary, cooperative plan of pupil exchanges which will assist in alleviating the school segregation in the City of St. Louis, and which also insures that inter-district pupil transfers will not impair the desegregation of the St. Louis school district ordered herein, and submit such plan to the Court for approval by *December 15, 1980.*

The State defendants, the United States, and the St. Louis Board of Education are ordered to develop a closer and more efficient cooperation among themselves for the pursuit of the objective hereof. In particular, they are directed to establish close liaison procedures and prepare concrete and specific proposals involving the county school districts and evaluate all other reasonable proposals, including any from county districts, and intensify their joint efforts. While the results disclosed in the Updating Report of the St. Louis Board of Education of September 11, 1980 are encouraging and represent some tangible achievements, a great deal more should be accomplished.

One of the subjects to be considered for voluntary cooperation between the City and the suburban school district, shall be the study of the feasibility of establishing magnet schools located in suburban districts with attendance open to students

of both the suburbs and the City. Consideration may be given to the expansion beyond the boundaries of St. Louis County into St. Charles and Jefferson Counties subject to limits of distance and practicality. The location of these magnet schools should be determined by agreement between the St. Louis Board of Education and the suburban school districts involved. The State and the St. Louis Board of Education will investigate the availability of funding for this program. A joint report on the status and results including the availability of technical assistance and funding of this effort should be given to the Court by the United States, the State defendants, and the St. Louis Board of Education on December 15, 1980.

Pursuant to [this] paragraph * * *, the State of Missouri and particularly the State Board of Education and the Commission of Education of the State of Missouri shall submit a new Plan of voluntary and cooperative desegregation on or before February 2, 1981. The plan shall encompass each district within St. Louis County. Jefferson and St. Charles Counties shall also be included for use of magnet schools to be located in St. Louis City and County.

The State of Missouri shall report back to the Court on March 2, 1981 as to those districts in St. Louis County, Jefferson and St. Charles Counties that are willing to participate in the plan and those that are not willing to participate in the plan. The report of March 2, 1981 shall include the number of students that each district is willing to receive and those that they desire to send outside of their district, either to magnet schools in the County or in the City of St. Louis, including the race and grade of those students.

b) To develop and submit to the Court by *December 15, 1980*, a plan for the consolidation or merger and full desegregation of the separate vocational educational programs operated by the Special District of St. Louis County and the school district of the City of St. Louis, for implementation in the 1981-82 school year.

c) To develop and submit to the Court by November 1, 1980, a suggested plan of inter-district school desegregation necessary to eradicate the remaining vestiges of government-imposed school segregation in the City of St. Louis and St. Louis County.

On or before February 16, 1981 the State defendants and the St. Louis Board of Education shall prepare and submit to the Court a feasibility plan of inter-district school desegregation involving the St. Louis school district and such suburban school districts, that will provide complete and lasting school desegregation. These considerations may apply to those suburban school districts which are not necessarily confined to the suburban districts located in St. Louis County but limited only by considerations of feasibility and practicality, including reasonableness of transportation times and distances. This feasibility plan should include educational and ancillary components such as those outlined in the Court of Appeals' opinion of March 3, 1980 in this case, and should specifically include pupil assignment and administrative reorganization provisions.

APPENDIX B

Section 161.092 of the revised statutes of the State of Missouri provides as follows:

161.092. Powers and duties of state board.—The state board of education shall:

(1) Adopt rules governing its own proceedings and formulate policies for the guidance of the commissioner of education and the department of elementary and secondary education;

(2) Carry out the educational policies of the state relating to public schools that are provided by law and supervise instruction in the public schools;

(3) Direct the investment of all moneys received by the state to be applied to the capital of any permanent fund established for the support of public education within the jurisdiction of the department of elementary and secondary education and see that the funds are applied to the branches of educational interest of the state that by grant, gift, devise or law they were originally intended, and if necessary institute suit for and collect the funds and return them to their legitimate channels;

(4) Cause to be assembled information which will reflect continuously the condition and management of the public schools of the state;

(5) Require of county clerks or treasurers, boards of education or other school officers, recorders and treasurers of cities, towns and villages, copies of all records required to be made by them and all other information in relation to the funds and condition of schools and the management thereof that is deemed necessary;

(6) Provide blanks suitable for use by officials in reporting the information required by the board;

(7) When conditions demand, cause the laws relating to schools to be published in a separate volume, with pertinent

notes and comments, for the guidance of those charged with the execution of the laws;

(8) Grant, without fee, certificates of qualification and licenses to teach in any of the public schools of the state, establish requirements therefor, formulate regulations governing the issuance thereof, and cause the certificates to be revoked for the reasons and in the manner provided in section 168.071, RSMo;

(9) Classify the public schools of the state, subject to limitations provided by law, establish requirements for the schools of each class, and formulate rules governing the inspection and accreditation of schools preparatory to classification;

(10) Make an annual report on or before the first Wednesday after the first day of January to the general assembly or, when it is not in session, to the governor for publication and transmission to the general assembly. The report shall be for the last preceding school year, and shall include: (a) a statement of the number of public schools in the state, the number of pupils attending the schools, their sex, and the branches taught; (b) a statement of the number of teachers employed, their sex, their professional training, and their average salary; (c) a statement of the receipts and disbursements of public school funds of every description, their sources, and the purposes for which they were disbursed; (d) suggestions for the improvement of public schools; and (e) any other information relative to the educational interests of the state that the law requires or the board deems important;

(11) Require from the chief officer of each division of the department of elementary and secondary education, on or before the thirty-first day of August of each year, reports containing information the board deems important and desires for publication;

(12) Cause fifty copies of its annual report to be reserved for the use of each division of the state department of elementary and secondary education, and ten copies for preservation in the state library;

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 72-100-C (C)

Craton Liddell, et al.,
Plaintiffs,

v.

The Board of Education of the City of St. Louis, Missouri, et al.,
Defendants.

MEMORANDUM

On December 15, 1980, the State of Missouri submitted a plan pursuant to paragraph 12(a) of the Court's Order of May 21, 1980. The Court has examined the plan as well as the joint report filed by the United States and the Board of Education of the City of St. Louis.

This Court is well aware of the problems encountered by the Board of Education of the State of Missouri attempting to obtain the voluntary cooperation of the County school districts in a plan which would assist in the desegregation of the City schools. The Court is also aware that the State of Missouri has appealed the orders of this Court; arguments on these matters have been heard by the United States Court of Appeals for the Eighth Circuit. However, the fact remains that the Court of Appeals for the Eighth Circuit has found that the State of Missouri as a matter of law has a duty to eliminate segregation in the schools of this State. That Court also suggested to this Court that an effort be made to work out a voluntary plan of integration within the County school districts. *See Adams* v. *United States,* 620 F.2d 1277, 1296 (8th Cir. 1980).

It is the opinion of this Court that the plan submitted by the State of Missouri is insufficient for this Court to make a determination as to whether or not it is feasible to pursue further the voluntary avenues of integration with the County schools. Various parties of this suit have indicated that it is their intention to add as parties to this suit a number of the districts in St. Louis County as well as the school districts in Jefferson and St. Charles Counties if a voluntary plan cannot be formulated. In one last effort to promote a voluntary plan, this Court will order the State of Missouri, and particularly the Board of Education for the State of Missouri, to submit another voluntary and cooperative plan on or before February 2, 1981. This plan shall contain the following:

1. The number of students that each district in the County can accommodate caused by the decrease in the number of students between the school years 1979-80 and the beginning of school year 1980-81.

2. Specific details for each district on the number of teachers, available space, and the desirability of its location for students from either the City of St. Louis or other districts within the County.

3. The present racial mixture of each school district in St. Louis County.

4. A plan providing for the interchange of students between the districts of the County in order to achieve more integration, and between the County and the City.

5. Specific recommendations for locations of magnet schools and the manner in which they may be implemented both on a part-time and a full-time basis for students within the County and from the City.

6. Specific financial estimates of costs and the means whereby the plan may be financed. The burden of financing will be borne primarily by the State of Missouri and shall discuss the possibilities of:

a. New legislation;

b. A fiscal incentive bill so that the districts participating will enhance their situation by participating;

c. Money to be taken from surplus of the State and given to the State Board of Education to pay the cost of transportation and additional expenses involved; and

d. Remuneration from the federal government on such plans.

7. Specifics as to the types and locations of magnet schools within the County. The plan should be specific on how the locations have been chosen. Locations shall be chosen in a fashion that would allow students from Jefferson County and St. Charles County to participate in the magnet schools if they desire.

The State of Missouri has a strong, effective Department of Education. It has a great deal of expertise and experience and should experience little difficulty in drawing and implementing a plan of voluntary and cooperative integration which is educationally sound and comprehensive. The Court will be looking forward to its comprehensive report to be filed on February 2, 1981. This report shall assume that each district in the County will participate in the voluntary and cooperative plan. The plan shall encompass every district in St. Louis County.

When the plan is filed on February 2, 1981, it shall also be sent to all parties of this litigation and to every district in St. Louis County as well as St. Charles and Jefferson Counties.

The Department of Education of the State of Missouri shall then contact each district in the County and report back to the Court on March 2, 1981. Included in its report shall be a list of those districts in St. Louis, Jefferson and St. Charles Counties that are willing to participate and the manner in which they are willing to participate. Included also shall be a breakdown for each district of the number of students the district is willing to

receive and the number of students the district is willing to send to other districts, including the race and grade of those students participating. The Department of Education shall also report on those districts which refuse to participate in the plan.

DATED this 19 day of December, 1980.

/s/ J. H. Meredith
United States District Judge